



Recent Developments in Campaign Finance Law

February 18, 2015



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Recent Developments

Objectives

- ▣ Highlight Recent Litigation, Policy and Legislative Developments
 - Contributions
 - Reporting
 - Corporate/Labor Activity
 - Technology-Related Developments
 - PAC Status
 - Personal Use of Campaign Funds
 - Coordination and Super PACs
 - Public Funding
 - Election Assistance Commission



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UPDATES ON CONTRIBUTIONS (SOURCES, LIMITS AND PROHIBITIONS)

Contributions: National Party Accounts

Consolidated and Further Appropriations Act of 2015

- ▣ Provisions of “cromnibus” permit national party committees to establish new accounts for:
 - Presidential nominating conventions
 - Election recounts and other legal expenses
 - Party headquarters buildings
- ▣ Contribution limit = 300% limit to national party
 - \$45,000/yr – multicandidate committees
 - \$100,200/yr – all other contributors (2015-16)



Recent Developments

I. Contributions – National Party Committee Accounts

A. Legislative Update

1. *Consolidated and Further Continuing Appropriations Act, 2015, Div. N, § 101, Public Law 113-235, 128 Stat. 2130, 2772-73 (2014).*
 - a. One provision of the “cromnibus” provides that national party committees may establish accounts to defray certain expenses incurred with respect to:
 - (1) presidential nominating conventions;
 - (2) election recounts and other legal proceedings; and
 - (3) headquarters buildings.
 - b. The contribution limits applicable to these accounts are 300% of the limit on contributions to national party committees, which means that the accounts may accept up to \$45,000 per year from multicandidate committees and \$100,200 per year from all other contributors during the 2015-2016 election cycle.
 - c. 160 Cong. Rec. H9286 (daily ed. Dec. 11, 2014) (statement of Rep. Boehner) and 160 Cong. Rec. S6814 (daily ed. Dec. 13, 2014) (statement of Sen. Reid).
 - d. *National Parties May Establish New Accounts, FEC Record* (Jan. 2015); *Contribution Limits for 2015-2016, FEC Record* (Feb. 2015).

Contributions: National Party Accounts

H.R. 154, Close the Floodgates Act

Rep. Derek Kilmer (WA-6)

- ▣ Would repeal “cromnibus” provisions that permit national parties to establish accounts for presidential nominating conventions, party headquarters buildings and recounts and other legal expenses



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2. **H.R. 154, *Close the Floodgates Act*, Rep. Derek Kilmer (WA-6)**
 - a. Introduced on January 6, 2015.
 - b. A bill to repeal the provision of the Consolidated and Further Continuing Appropriations Act, 2015, that amended FECA to establish separate contribution limits for contributions made to national parties to support presidential nominating conventions, party headquarters buildings, and recounts and other legal proceedings.
 - c. *Referred to the Committee on House Administration.*

Contributions: National Party Accounts

- ▣ Future rulemaking possible
- ▣ AO 2014-12 (DNC and RNC)
 - Allows national party committee to establish convention committee to raise funds under separate limit



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B. Policy Update

1. Future Rulemaking Possible

Commission is assessing the impact of the Consolidated and Further Continuing Appropriations Act on existing regulations.

2. AO 2014-12 (Democratic National Committee (DNC) and Republican National Committee (RNC))

- a. Shortly before Congress amended FECA to establish separate national party accounts, the DNC and the RNC jointly asked if they can raise funds under a separate contribution limit to finance expenses for their 2016 presidential nominating conventions.
- b. This AO concluded that they may establish convention committees to raise funds under a separate limit.

Contributions: Biennial Aggregate Limits

McCutcheon v. FEC

- ▣ Supreme Court strikes down biennial aggregate limits on overall individual contributions to:
 - Candidates;
 - Party Committees; and
 - PACs
- ▣ Limits violate First Amendment



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II. Contributions: Biennial Aggregate Limits

A. Litigation Update

1. *McCutcheon v. FEC*, 134 S. Ct. 1434 (Apr. 2, 2014).

- a. Plaintiffs Shaun McCutcheon and the Republican National Committee challenged the biennial aggregate contribution limits that at the time were codified at 2 U.S.C. § 441a(a)(3) and limited individuals to giving \$48,600 to candidates and \$74,600 to non-candidate committees, on First Amendment grounds.
- b. On April 2, 2014, the Supreme Court concluded that the aggregate limits are unconstitutional. The aggregate limits prohibit an individual from fully contributing to all the candidates of a contributor's choosing, and the Court noted that there were impediments to individuals being able to find other ways of expressing support for a number of candidates.
- c. Aggregate limits do not meaningfully prevent actual or apparent quid pro quo corruption, the court's opinion concluded, because an individual could not make many contributions to other entities in order to have those funds routed to a particular candidate of their choosing. The court found that other rules and practical concerns would prevent that from happening.
- d. Regarding concerns about the potential for officeholders to solicit and receive large contributions for a number of candidates and committees at once, the Court concluded the aggregate limits restricted more First Amendment activity than necessary to serve that purpose.

Contributions: Biennial Aggregate Limits

Commission Rulemaking

- ▣ Commission amends its regulations to conform to the *McCutcheon* decision
- ▣ Commission asks for public comment on whether to revise other regulations in light of *McCutcheon* decision
- ▣ Public hearing held on February 11, 2015



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B. Policy Update

1. **Aggregate Biennial Contribution Limits, 79 Fed. Reg. 77,373 (Dec. 24, 2014) (Final Rule)**

- a. To conform its regulations to the *McCutcheon* decision, the Commission deleted 11 CFR 110.5, which implemented the FECA's aggregate contribution limits.
- b. The Final Rule also made technical and conforming changes to several other regulations.

2. **Aggregate Biennial Contribution Limits, 79 Fed. Reg. 62,361 (Oct. 17, 2014) (Advance Notice of Proposed Rulemaking)**

- a. The Commission asked for public comment on whether to begin a rulemaking to revise other regulations following the *McCutcheon* decision.
- b. Specifically, the Commission asked whether to revise its regulations regarding earmarking, affiliation, joint fundraising committees, and disclosure.
- c. The Commission received over 32,000 comments and held a day-long public hearing on February 11, 2015.

Contributions: Party IE Accounts

Rufer v. FEC / RNC v. FEC

- ▣ Plaintiff political parties sought to accept contributions of unlimited amounts in bank accounts for independent expenditures
- ▣ District court found not frivolous but not likely to succeed
- ▣ Stipulated dismissals at Court of Appeals



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III. Contributions: Party Committee Independent Expenditure Accounts

A. Litigation Update

1. ***Rufer v. FEC / Republican National Committee (RNC) v. FEC*, ___ F. Supp. 2d ___, 2014 WL 4076053 (D.D.C. Aug. 19, 2014)**
 - a. Committees of the Libertarian and Republican parties and persons associated with those parties challenged limits on contributions to the parties as applied to accounts they proposed to use solely for expenditures that are not coordinated with candidates. The court denied the Rufer/Libertarian Party plaintiffs' motion for a preliminary injunction, finding them unlikely to succeed given past Supreme Court cases upholding limits on contributions to political parties.
 - b. The court also considered requests by plaintiffs to proceed pursuant to two special judicial review provisions and found the case inappropriate for one provision that provides for a direct appeal to the Supreme Court. The court found the case appropriate for another special procedure, concluding that the challenges presented substantial, nonfrivolous questions that were sent to the en banc Court of Appeals.
 - c. Plaintiffs in both cases ultimately chose to dismiss their cases.

Contributions: Per Election Limits

Holmes v. FEC

- ▣ Challenge to contributions limits applied on a per election basis
- ▣ District court found not likely to succeed and denied preliminary injunction



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IV. Contributions: Per Election Limit

A. Litigation Update

1. *Holmes v. FEC*, __ F. Supp. 3d __, 2014 WL 5316216 (D.D.C. Oct. 20, 2014)
 - a. Two contributors to candidates contend that the then-\$2,600, per-election contribution limit in federal law violated their First and Fifth Amendment rights by preventing them from donating \$5,200 to candidates after primary elections for use only in connection with general-election campaigns.
 - b. On October 20, 2014, the court denied plaintiffs' motion for a preliminary injunction, finding that they were unlikely to succeed on their First Amendment claim because they could have contributed \$2,600 to their preferred candidates before those candidates' primary elections, and the per-election limits are closely drawn to reduce corruption or its appearance.
 - c. The court also found that federal law does not treat contributors to candidates who ran in uncontested primaries differently from other contributors. The court noted that it is candidates, rather than contributors, who determine how primary-election funds will be spent. The contribution limits are the same for all candidates based on the number of elections in which they run. The court thus found plaintiffs unlikely to succeed on their claim that they had been denied equal protection.

- d. The district court sent constitutional questions to the D.C. Circuit Court of Appeals en banc pursuant to a special judicial review provision. That court returned the case to the district court for record development and frivolousness screening. The district court will complete its consideration of the case by April 24, 2015.

Contributions: Limit to Candidates

H.R. 447

Rep. Michael Capuano (MA-7)



- ▣ Reduces limit on contributions from individuals to \$1,000; to be indexed for inflation after 2018



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V. Contributions: Contribution Limit to Candidates

A. Legislative Update

1. H.R. 447, Rep. Michael E. Capuano (MA-7)

- a. Introduced on January 21, 2015.
- b. Reduces the contribution limit on contributions from individuals to candidates to \$1,000, which would be indexed to inflation after 2018.
- c. *Referred to the Committee on House Administration.*

Contributions: Contractors

Wagner v. FEC

- ▣ Challenge to prohibition on contributions by individual federal government contractors under:
 - First Amendment
 - Equal Protection
- ▣ Before the D.C. Circuit Court of Appeals sitting *en banc*



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VI. Contributions: Federal Government Contractors

A. Litigation Update

1. ***Wagner v. FEC*, 901 F. Supp. 2d 101 (D.D.C. Nov. 2, 2012), vacated, 717 F.3d 1007 (D.C. Cir. May 31, 2013), questions certified by, No. 11-1841 (D.D.C. June 5, 2013).**
 - a. This case is a constitutional challenge to the prohibition on contributions by federal government contractors, 52 U.S.C. § 30119 as applied to individual contractors.
 - b. In November 2012, the United States District Court for the District of Columbia upheld the statute. The district court held that the ban does not violate:
 - (1) the First Amendment, because it is closely drawn to serve the government's important interest in preventing actual and apparent corruption, or
 - (2) the equal protection component of the Fifth Amendment, because individual contractors are not similarly situated to other persons who can generally make contributions (specifically federal employees and persons associated with corporations).

- c. In May 2013, the United States Court of Appeals for the District of Columbia Circuit vacated the district court's ruling, finding that plaintiffs were required to pursue the case under a special judicial-review provision in FECA, 2 U.S.C. § 437h. The court held that the parties named in that provision — the Commission, national party committees, and individual voters — *must* initiate litigation over the constitutionality of the Act under that provision. The unique provision requires the district court to certify nonfrivolous legal questions about FECA to the Court of Appeals sitting *en banc*.
- d. In June 2013, the district court issued an order certifying the constitutional questions in the case to the *en banc* D.C. Circuit. Oral argument was held on September 30, 2014.

Contributions: Hybrid SSFs

Stop This Insanity, Inc. Employee Leadership Fund, et al v. FEC

▣ DC Circuit Court:

- The First Amendment does not require that SSFs be permitted to set up an independent expenditure account without contribution or solicitation restrictions



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VII. Contributions: Hybrid SSFs

A. Litigation Update

1. ***Stop This Insanity, Inc. Employee Leadership Fund v. FEC*, 761 F.3d 10 (D.C. Cir. Aug. 5, 2014), cert. denied 83 U.S.L.W. 3242 (U.S. Jan. 12, 2015) (No. 14-391).**
 - a. The separate segregated fund ("SSF") of Stop This Insanity, Inc., a corporation, sought to establish a non-contribution account and to solicit unlimited contributions from members of its restricted class, as well as other persons, in order to fund independent expenditures.

- b. Stop This Insanity, its SSF the Leadership Fund, and a group of potential contributors challenge the application of contribution and solicitation restrictions to their proposed non-contribution account of an SSF as an unconstitutional limit on their First Amendment rights of freedom of speech and association.
- c. The Court of Appeals for the D.C. Circuit rejected the plaintiffs' First Amendment challenge. The Court noted that there are solicitation restrictions on corporate PACs, and that corporations are permitted to fund the establishment, administration, and solicitation costs of their PACs without disclosure. The court also noted that PACs are no longer necessary for corporate involvement in independent expenditures; following *Citizens United*, corporations are permitted to make such expenditures with their general treasury funds.
- d. By seeking to finance independent expenditures through its separate segregated fund rather than directly with corporate funds, the court concluded that Stop This Insanity, Inc. was voluntarily choosing a more burdensome alternative. Because of the substantial overlap between the political speech of Stop This Insanity, Inc. and its separate segregated fund, the court held there was no substantial burden on the entities' First Amendment rights.
- e. In the alternative, even assuming a separate segregated fund's First Amendment rights should be viewed in isolation from its sponsoring organization, the Court found that disclosure requirements for solicitations furthered the governmental interest in preventing quid pro quo corruption.
- f. On January 12, 2015, the Supreme Court denied the plaintiffs' petition for certiorari.

Contributions: Multicandidate Status

Stop Reckless Economic Instability caused by Democrats PAC v. FEC

- ▣ Challenges:
 - Six-month waiting period for multicandidate status
 - Limits on contributions from multicandidate PACs to federal party committees
- ▣ Contends limits violate First and Fifth Amendments



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VIII. Contributions: Multicandidate Status

A. Litigation Update

1. ***Stop Reckless Economic Instability caused by Democrats PAC, et al. v. FEC*, Civil No. 1:14-397 (AJT-IDD) (E.D. Va. filed Apr. 14, 2014)**
 - a. Stop Reckless Economic Instability caused by Democrats PAC (“Stop PAC”), Tea Party Leadership Fund, the Alexandria Republican City Committee, and American Future PAC claim that the limits infringe upon their First Amendment rights of association and expression and the Fifth Amendment’s guarantee of equal protection.
 - b. They seek to have:
 - (1) the six-month waiting period for multicandidate PAC status struck down, so that the limit on contributions from Stop PAC to candidates would be raised from \$2,600 per election (and indexed for inflation) to \$5,000 per election;
 - (2) the limit on contributions from multicandidate PACs to state party committees raised from \$5,000 per calendar year to \$10,000 per calendar; and
 - (3) the limit on contributions from multicandidate PACs to national party committees raised from \$15,000 per calendar year to \$32,400 per calendar year.

- c. In each case, they seek whichever contribution limit is higher between 2 U.S.C. §441a(a)(2) (the statutory limits for multicandidate candidate committees) and 2 U.S.C. §441a(a)(1) (the statutory limits for other persons).
- d. A hearing was held on cross-motions for summary judgment on October 31, 2014.

Contributions: Bequests

Libertarian National Committee v. FEC

- ▣ Challenge to limit on contributions to national party committees as applied to bequests
- ▣ D.C. Circuit: In general, limiting bequests to national party does not violate First Amendment
- ▣ On March 26, 2014, D.C. Circuit dismissed as moot as-applied challenge re: \$217,734 bequest to LNC



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IX. Contributions: Bequests

A. Litigation Update

1. ***Libertarian National Committee v. FEC*, 930 F. Supp. 2d 154 (D.D.C Mar. 18, 2013), *aff'd in part*, 2014 WL 590973 (D.C. Cir. Feb. 7, 2014).**
 - a. Challenge to the annual limit on contributions to national party committees, then codified at 2 U.S.C. § 441a(a)(1)(B), and in the amount of \$32,400 (but indexed for inflation) as applied to bequests.
 - b. In 2007, a Libertarian National Committee (“LNC”) supporter bequeathed about \$217,000 to the LNC. The LNC wanted to accept that entire amount immediately instead of in annual amounts complying with the contribution limit.

- c. In March 2013, the United States District Court for the District of Columbia held that, generally, the contribution limit is constitutional as applied to bequeathed contributions to national party committees. In February 2014, a three-judge panel of the D.C. Circuit summarily affirmed this portion of the district court's ruling.
- d. In a separate portion of its March 2013 ruling, the district court asked the D.C. Circuit sitting *en banc* (all active judges) to consider whether the particular \$217,000 bequest to the LNC could validly be limited given the party's limited contact with the donor before he passed.
- e. On March 26, 2014, the *en banc* D.C. Circuit dismissed as moot the as-applied challenge re: \$217,734 bequest to LNC.

Contributions: Bequests

H.R. 149

Rep. Walter Jones (NC-3)



- ▣ Permits candidates to designate an individual to disburse committee funds in event of candidate's death

B. Legislative Update

1. **H.R. 149, Rep. Walter B. Jones, Jr. (NC-3)**

- a. Introduced on January 6, 2015.
- b. Permits candidates to designate an individual who would be authorized to disburse funds of the candidate's authorized campaign committees in the event of the candidate's death.
- c. *Referred to Committee on House Administration.*

d. *History:*

- *113th Congress (2013-14): H.R. 186 introduced.*
- *112th Congress (2011-12): H.R. 406 passed the House by voice vote on Sept. 10, 2012; H.R. Rept. 112-628 (July 30, 2012).*
- *111th Congress (2009-10): H.R. 749 passed the House by voice vote on April 22, 2009; H.R. Rept. 111-77 (Apr. 21, 2009).*
- *110th Congress (2007-08): H.R. 3032 passed the House by voice vote on July 15, 2008; H.R. Rept. 110-602 (Apr. 22, 2008).*

UPDATES ON REPORTING AND DISCLOSURE

Reporting: Electioneering Communications

Van Hollen v. FEC

- ▣ Challenge to rules on contributors:
 - Disclosure of contributors to corporations and unions making electioneering communications
- ▣ Alleges:
 - Regulation requires too little disclosure
 - Only persons giving “for the purpose of furthering electioneering communications” must be disclosed
- ▣ District court struck the regulation down



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I. Reporting: Electioneering Communications

A. Litigation Update

1. ***Van Hollen v. FEC*, __ F. Supp. 3d __, 2014 WL 6657240 (D.D.C. Nov. 25, 2014), appeal docketed, Nos. 15-5016, 15-5017 (D.C. Cir.).**
 - a. Challenge to FEC regulations on the disclosure of donations given to fund electioneering communications.
 - b. Representative Van Hollen claims that 11 CFR 104.20(c)(9) is contrary to FECA. The regulation requires the disclosure of any donation of \$1,000 or more to corporations (including nonprofits) or labor organizations when the donation “was made for the purpose of furthering electioneering communications.”
 - c. Van Hollen argues that FECA requires corporations and unions to disclose all donations they receive of \$1,000 or more unless the donations for electioneering communications have been segregated in a separate bank account.

- d. The district court initially found that FECA clearly requires every person who funds electioneering communications to disclose all contributors, but the U.S. Court of Appeals for the District of Columbia Circuit reversed and found that the Act's disclosure requirement is ambiguous and the Commission had some room for interpretation. The matter returned to the district court for a determination of whether the FEC had reasonably exercised its discretion.
- e. On November 25, 2014, the district court found the Commission's rationale for the regulation unreasonable and unsupported by the evidence in the rulemaking record, and also found that the regulation frustrated the statute's disclosure objective. The court vacated the regulation.
- f. Intervenor-defendants Center for Individual Freedom and Hispanic Leadership Fund have appealed the decision.

Reporting: Electioneering Communications

H.R. 430, DISCLOSE 2015 Act

Rep. Chris Van Hollen (MD-8)

- ☐ Enhanced Disclosure
- ☐ Extends "Stand by Your Ad"
- ☐ Revises IE and EC Definitions
- ☐ Requires Corporate Disclosure of Shareholders
- ☐ Expands Lobbyist Disclosure of Campaign Expenditures



S. 229, DISCLOSE 2015 Act

Sen. Sheldon Whitehouse (RI)

- ☐ Similar to H.R. 430 with a few exceptions



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B. Legislative Update

1. *H.R. 430, Disclosure of Information on Spending on Campaigns Leads to Open and Secure Elections Act of 2015 (DISCLOSE 2015 Act), Rep. Chris Van Hollen (MD-8)*

- a. Introduced January 21, 2015.
- b. Provides for additional disclosure requirements for corporations, labor organizations, Super PACs, 501(c) and 527 organizations.

- c. Specifically, covered organizations would be required to disclose campaign-related disbursements, which would include electioneering communications, independent expenditures and related transfers.
 - d. Additionally, the bill would:
 - (1) Extend the definition of “independent expenditure” to functional equivalent of express advocacy;
 - (2) Expand the electioneering communications time period;
 - (3) Extend “stand by your ad” disclaimer requirements to include top five funders;
 - (4) Require corporate disclosure to shareholders; and
 - (5) Expand lobbyist disclosure of campaign expenditures under Lobbying Disclosure Act of 1995.
 - e. *Referred to the Committees on House Administration, Judiciary and Ways & Means.*
 - f. *History:*
 - *113th Congress (2013-14): H.R. 148, S. 2516*
 - *112th Congress (2011-12): H.R. 4010, S. 2219 and S. 3369*
 - *111th Congress (2009-10): H.R. 5175, S. 3295 and S. 3628. H.R. 5175 was subject of H.R. Rept. 111-492 (May 25, 2010) and passed the House of Representatives by 219-206 on June 24, 2010.*
- 2. S. 229, Democracy Is Strengthened by Casting Light On Spending in Elections Act of 2015 (DISCLOSE 2015 Act), Sen. Sheldon Whitehouse (RI)**
- a. Introduced on January 21, 2015.
 - b. The Senate version of the DISCLOSE 2015 Act is similar to the House bill, H.R. 430, with a few exceptions.
 - (1) S. 229 would not extend “stand by your ad” disclaimer requirements.
 - (2) S. 229 would not require additional corporate disclosure to shareholders.
 - (3) S. 229 would not expand lobbyist disclosure under Lobbying Disclosure Act of 1995.
 - c. *Referred to the Committee on Rules & Administration.*
 - d. *History:*
 - *113th Congress (2013-14): H.R. 148, S. 2516*
 - *112th Congress (2011-12): H.R. 4010, S. 2219 and S. 3369*
 - *111th Congress (2009-10): H.R. 5175, S. 3295 and S. 3628. H.R. 5175 was subject of H.R. Rept. 111-492 (May 25, 2010) and passed the House of Representatives by 219-206 on June 24, 2010.*

Reporting: Electioneering Communications

Independence Institute v. FEC

- ▣ Challenge to rules on communication content
- ▣ Disclosure requirements valid as applied to advertisements that do not attack or oppose the referenced federal candidates



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C. Litigation Update

1. ***Independence Institute v. FEC*__ F. Supp. 3d __, 2014 WL 4959403 (D.D.C. Oct. 6, 2014), appeal docketed, No. 14-5249 (D.C. Cir.)**
 - a. The Independence Institute, a nonprofit organization, challenged the application of federal disclosure requirements for “electioneering communications” to a radio advertisement it planned to air that it contended was a “genuine issue ad” which did not attack the referenced federal candidate.
 - b. On October 6, 2014, the U.S. District Court for the District of Columbia court awarded judgment to the Commission, finding that the Supreme Court had rejected an attempt to limit application of the disclosure requirements to express advocacy and its functional equivalent in *Citizens United*.
 - c. Independence Institute has appealed.

Reporting: Administrative Fines

- ▣ Legislation enacted December 26, 2013 authorizes extension and expansion
 - AFP to cover reporting periods through December 31, 2018; and
 - May cover certain reports not previously subject to administrative fines
- ▣ Commission approves rules on January 13, 2014 to extend AFP through 2018
- ▣ Expansion considered in separate rulemaking



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II. Reporting: Administrative Fines

A. Policy Update

1. **Extension of Administrative Fines Program (79 FR 3302 January 21, 2014) Extends AFP to cover reporting periods through December 31, 2018.**
 - a. Implements Public Law 113-72, 127 Stat. 1210, sec. 1 (Dec. 26, 2013), which also authorizes Commission to expand scope of AFP to cover additional categories of reporting violations.
 - b. Future rulemaking will address possible expansion.

Reporting: Administrative Fines

- ▣ Expansion may include:
 - IE reports filed by individuals and others (Form 5)
 - Certain FEA reports filed by parties (Form 3X)
 - Electioneering Communication reports (Form 9)
 - 24- and 48-Hour IE reports filed by political committees (Schedule E) and by individuals and others (Form 5)
 - Lobbyist bundling reports (Form 3L)
 - Convention reports filed by convention/host committees



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Reporting: Administrative Fines

Kuhn for Congress v. FEC

- ▣ Plaintiff seeks review of FEC administrative fine assessed for late filed report
- ▣ Inexperienced treasurer, birth of treasurer's baby and accountant errors do not excuse late filing.



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B. Litigation Update

- 1. Kuhn for Congress v. FEC, No. 2:13-CV-3337-PMD, 2014 WL 7146910 (D.S.C. Dec. 15, 2014)**
 - a. Kuhn for Congress filed an FEC report late, did not participate during the FEC's administrative-fine process, and was assessed an \$8,800 civil penalty. The committee filed a petition seeking review of the administrative fine with the U.S. District Court for the District of South Carolina.
 - b. On December 15, 2014, the court found that plaintiff had waived its arguments against the fine by not challenging the fine before the FEC.
 - c. The court also found that plaintiff's defenses failed to show that it had used "best efforts to file in a timely manner" but was prevented from doing so "by reasonably unforeseen circumstances" beyond its control. Its alleged difficulties included finding an experienced and knowledgeable person to serve as treasurer, the 12-day premature birth of the treasurer's baby, and alleged errors by the Committee's accountant.
 - d. The court granted the FEC's motion to dismiss.

UPDATES ON CORPORATE//LABOR ACTIVITY

Corporate/Labor Activity

Citizens United Rulemaking

- ▣ Commission published Final Rule on Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations on October 21, 2014
- ▣ Final Rule amends Commission regulations in response to the *Citizens United* decision



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I. Corporate/Labor Activity: *Citizens United*

A. Policy Update

1. **Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations, 79 Fed. Reg. 62,797 (Oct. 21, 2014) (Final Rule)**
 - a. Removes the regulatory prohibition on the use of corporate and labor organization general treasury funds to finance independent expenditures and electioneering communications.
 - b. Appends a note to 11 CFR 114.2 to recognize that corporations and labor organizations may contribute to nonconnected committees that make only independent expenditures (Super PACs), and to separate accounts maintained by nonconnected committees for making only independent expenditures (hybrid committees).
 - c. Revises several other regulatory provisions in 11 CFR Part 114 concerning the making of independent expenditures and electioneering communications by corporations and labor organizations.

Corporate/Labor Activity

Legislative Responses to *Citizens United*

- ▣ SEC Disclosure Changes
 - S. 214 - Sen. Robert Menendez (NJ)
 - H.R. 446 – Rep Michael E. Capuano (MA-7)
 - H.R. 418 – Rep. Grace Meng (NY-6)
- ▣ H.R. 450 – Rep. Keith Ellison (MN-5)
- ▣ Proposed Constitutional Amendments
 - S.J. Res. 4 & 5
 - H.J. Res. 22, 23 & 24



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B. Legislative Update

1. **S. 214, *Shareholder Protection Act of 2015*, Sen. Robert Menendez (NJ)**
 - a. Introduced on January 21, 2015.
 - b. Amends the Securities Exchange Act of 1934 to require a shareholders' vote to authorize making an independent expenditure, electioneering communication or payment of dues that could be used for either.
 - c. *Referred to the Committee on Banking, Housing & Urban Affairs.*
2. **H.R. 446, *Shareholder Protection Act of 2015*, Rep. Michael E. Capuano (MA-7)**
 - a. Introduced on January 21, 2015.
 - b. Amends the Securities Exchange Act of 1934 to require a shareholders' vote to authorize making an independent expenditure, electioneering communication or payment of dues that could be used for either.
 - c. *Referred to the Committee on Financial Services.*
3. **H.R. 418, *Corporate Politics Transparency Act*, Rep. Grace Meng (NY-6)**
 - a. Introduced on January 20, 2015.
 - b. Amends the Securities Act of 1933 and the Securities Exchange Act of 1934 to require disclosure of payment of independent expenditures, electioneering communications or dues that could be used or transferred for either during the previous six years.
 - c. The disclosure would be required in SEC registration statements, quarterly reports and annual reports.
 - d. *Referred to the Committee on Financial Services.*

4. **H.R. 450, *Protect Democracy from Criminal Corporations Act*, Rep. Keith Ellison (MN-5)**
 - a. Introduced on January 21, 2015.
 - b. Prohibits corporations that have been convicted of certain felonies or paid \$1 million or more pursuant to an agreement with the Attorney General related to a felony charge from making contributions, independent expenditures or electioneering communications.
 - c. *Referred to the Committee on House Administration.*
5. **Proposed Constitutional Amendments**
 - a. **S. J. Res. 4, Sen. Bernard Sanders (VT)**
 - (1) Introduced on January 21, 2015,
 - (2) Joint resolution proposing a constitutional amendment to limit the ability to make contributions or expenditures intended to affect elections to natural persons.
 - (3) *Referred to the Committee on the Judiciary.*
 - b. **S. J. Res. 5, Sen. Tom Udall (NM)**
 - (1) Introduced on January 21, 2015.
 - (2) Joint resolution proposing a constitutional amendment permitting Congress and the states to regulate contributions and expenditures intended to affect Federal and state elections.
 - (3) *Referred to the Committee on the Judiciary,*
 - c. **H. J. Res. 22, Rep. Theodore E. Deutch (FL-21)**
 - (1) Introduced on January 20, 2015.
 - (2) Joint resolution proposing a constitutional amendment related to contributions and expenditures intended to affect elections.
 - (3) *Referred to the Committee on the Judiciary.*
 - d. **H. J. Res. 23, Rep. James P. McGovern (MA-2)**
 - (1) Introduced on January 21, 2015.
 - (2) Joint resolution proposing a constitutional amendment to reserve the rights protected in the Constitution to natural persons.
 - (3) *Referred to the Committee on the Judiciary.*
 - e. **H. J. Res. 24, Rep. John C. Carney, Jr. (DE)**
 - (1) Introduced on January 21, 2015.
 - (2) Joint resolution proposing a constitutional amendment permitting Congress and the states to regulate contributions and expenditures intended to affect Federal elections.
 - (3) *Referred to the Committee on the Judiciary*

Corporate/Labor Activity

Providing Fringe Benefits to Employees Running for Federal Office

- ▣ 2014-14 (Trammell)
- ▣ 2014-15 (Brat)



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Recent Developments

II. Corporate/Labor Activity: Fringe Benefits

A. Policy Update

1. AO 2014-14 (Trammell) and AO 2014-15 (Brat)

- a. Two tenured professors employed by Randolph-Macon College, a Virginia registered corporation, won their respective political party nominations for the U.S. House of Representatives.
- b. The Commission concluded that the College may pay its share of certain fringe benefits during the professors' unpaid leave of absence to run for federal office.

Corporate/Labor Activity

SSF Affiliation

- ▣ AO 2014-21 (Cambia Health Solutions)
- ▣ AO 2014-11 (Health Care Services Corporation Employees)
- ▣ AO 2014-18 (Rayonier Advanced Materials)
- ▣ AO 2014-17 (Berkadia Commercial Mortgage)



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Recent Developments

III. Corporate/Labor Activity: SSF Affiliation

A. Policy Update

1. **AO 2014-11 (Health Care Services Corporation Employees) and AO 2014-21 (Cambia Health Solutions)**
 - a. The advisory opinions considered whether the SSFs of two health insurance corporations were affiliated with the SSFs of the Blue Cross and Blue Shield Association.
 - b. The Commission concluded in both instances that SSFs were disaffiliated after a change in the business relationship between the corporations.
2. **AO 2014-18 (Rayonier Advanced Materials)**

SSFs of two corporations are disaffiliated after corporate spin-off.
3. **AO 2014-17 (Berkadia Commercial Mortgage)**

An LLC wholly owned by two corporations and affiliated with each of them may authorize a trade association of which it is a member to solicit its administrative and executive personnel.

Corporate/Labor Activity

Corporate Affinity Credit Card Program

- ▣ AO 2014-09 (REED Marketing)
 - Corporation's proposal to develop and market an affinity credit card program between banks and committees is permissible



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Recent Developments

IV. Corporate/Labor Activity: Affinity Credit Card Program

A. Policy Update

1. AO 2015-09 (REED Marketing)

A corporation's proposal to develop and market an affinity credit card program between banks and political committees is permissible.

Corporate/Labor Activity

State Laws Regulating SSF Activities and Federal Preemption

- ▣ AO 2014-04 (Enterprise Holdings)
- ▣ AO 2014-05 (Henry Ford Health System Government Affairs Services)



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Recent Developments

V. Corporate/Labor Activity: State Laws Regulating SSF Activities and Federal Preemption

A. Policy Update

1. AO 2014-04 (Enterprise Holdings)

- a. A corporation asked whether federal law preempted New York law regarding the corporation's use of payroll deductions to process voluntary contributions to its SSF.
- b. The Commission concluded that the deductions were permissible under the Act and did not reach the preemption question because the state clarified that the state law did not apply.

2. AO 2014-05 (Henry Ford Health System Government Affairs Services)

- a. An SSF asked whether it may solicit contributions from employees of its connected organization's corporate parent and that parent's other subsidiaries, and whether the Act preempted Michigan law on this issue.
- b. The Commission concluded that the solicitations were permissible under the Act, and that the state officially interpreted the law as not regulating contributions made to support or oppose federal candidates.

UPDATES ON TECHNOLOGY-RELATED DEVELOPMENTS

Technology-Related Developments

Technological Modernization

- ▣ ANPRM possible updates to address electronic transactions, including:
 - Credit and debit cards
 - Internet-based payment processing
 - Text Contributions
 - “Signatures” and “writings,” including electronic redesignations



Recent Developments

I. Technology-Related Developments: Technological Modernization

A. Policy Update

1. **Advance Notice of Proposed Rulemaking (ANPRM) on Technological Modernization**
 - a. ANPRM asks whether the Commission should begin a formal rulemaking to revise its regulations to address contributions and expenditures made by electronic means (such as by credit card, debit card, internet-based payment processing and text messaging); to eliminate or update references to outdated technologies; and to address other technological modernization issues.
 - b. Published in the *Federal Register* on May 2, 2013.
See <https://www.federalregister.gov/articles/2013/05/02/2013-10326/technological-modernization> or <http://sers.fec.gov/fosers/showpdf.htm?docid=296410>.
 - c. The comment period closed on June 3, 2013.
Comments received are available at <http://sers.fec.gov/fosers/viewreg.htm?regno=2013-01>

Technology-Related Developments

Using Bitcoins

▣ AOs 2013-15 (Conservative Action Fund) & 2014-02 (Make Your Laws)

- Permissibility
- Valuation
- Reporting
- Disbursements



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Recent Developments

II. Technology-Related Developments: Bitcoins

A. Policy Update

1 AO 2013-15 (Conservative Action Fund)

Addresses whether political committees may accept Bitcoin contributions and, if so, how to value, report, and disburse them.

2. AO 2014-02 (Make Your Laws PAC)

Presents similar question as to whether a political committee may accept Bitcoins as contributions, and, if so, how to value, report, and disburse them.

Technology-Related Developments

S. 366

Sen. Jon Tester (MT)

- ▣ Requires Senate candidates to file with FEC, subject to electronic filing requirements



H.R. 367

Rep. Ted Deutch (FL-21)

- ▣ Requires FEC to establish and operate website for viewing contents of certain political ads
- ▣ Requires sponsors of such ads to furnish ads to FEC



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Recent Developments

III. Technology-Related Developments: Electronic Filing and Availability of Political Ads on FEC Website

A. Legislative Update

1. ***S. 366, Senate Campaign Disclosure Disparity Act, Senator Jon Tester of Montana.***
 - a. Introduced on February 4, 2015.
 - b. Requires Senate candidates to file designations, statements, and reports with FEC, which would make them subject to electronic filing requirements.
 - c. *Referred to the Committee on Rules & Administration.*
2. ***H.R. 367, Campaign Sunlight Act of 2015, Rep. Theodore E. Deutch (FL-21)***
 - a. Introduced on January 14, 2015.
 - b. Requires the FEC to establish and operate a website for viewing the contents of certain political advertisements, and require that the sponsors of such ads to furnish the ads to the FEC.
 - c. *Referred to the Committee on House Administration*

UPDATES ON PAC STATUS

PAC Status

Public Citizen v. FEC / CREW v. FEC

- ▣ Challenge to FEC dismissal of complaint alleging Crossroads GPS should have registered and reported as Super PAC
 - Challenges to three FEC dismissals of complaints alleging group should have registered and reported as super PACs.
 - Must the Commission analyze spending per calendar year?

I. PAC Status

A. Litigation Update

1. ***Public Citizen v. FEC*, No. 14-cv-00148 (D.D.C. filed Jan. 31, 2014)**
 - a. Plaintiffs Public Citizen, Craig Holman, ProtectOurElections.org, and Kevin Zeese challenge the Commission's dismissal of their allegation that Crossroads GPS, an entity organized under Section 501(c)(4) of the Internal Revenue Code, violated FECA by failing to register and report as a political committee.
 - b. Plaintiffs contend that the group of Commissioners whose votes prevented the Commission from moving forward with an investigation acted contrary to law.
 - c. The case raises a number of issues regarding the determination of political committee status, including whether it was reasonable for the controlling group of Commissioners to decline to count ads that were not express advocacy towards political committee status and whether it was reasonable to examine Crossroads GPS's spending according to the entity's fiscal year rather than by calendar year.

2. ***Citizens for Responsibility and Ethics in Washington v. FEC*, No. 14-cv-01419-CRC (D.D.C. filed Aug. 20, 2014)**
- Plaintiffs Citizens for Responsibility and Ethics in Washington (CREW) and its executive director, Melanie Sloan challenge the Commission's dismissal of their administrative complaints alleging that two entities violated FECA by failing to register and report as political committees: American Action Network and Americans for Job Security.
 - The case raises the same issues discussed in regard to *Public Citizen*, above.
 - CREW also contends that the Commission has issued policies and/or a "de facto regulation" regarding these issues without following the procedural requirements of notice and an opportunity to comment for making regulations.

PAC Status

S. 274

Sen. R. Edward Cruz (TX)

- ▣ Amends IRS code to redefine 527 political organization
- ▣ Revises definition of social welfare to include FECA expenditures up to 50% of organization's activity



H.R. 153

Rep. Walter B. Jones, Jr. (NC-3)

- ▣ Amends IRS code to repeal prohibition on 501(c)(3)s from participating in political campaigns



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Recent Developments

B. Legislative Update

1. S. 274, Sen. R. Edward Cruz (TX)

- Introduced on January 28, 2015.
- A bill that would amend the Internal Revenue Code to redefine a 527 political organization as an organization that:
 - is registered with the FEC as a political committee,

- (2) is determined by the FEC or a court to be required to register with the FEC as a political committee, or
 - (3) is registered with a state agency as a political committee.
 - c. The bill would also revise the definition of “promotion of social welfare” in the Internal Revenue Code to include Federal Election Campaign Act expenditures up to 50% of organization’s activity.
 - d. *Referred to the Committee on Finance.*
- 2. **H.R. 153, Rep. Walter B. Jones, Jr. (NC-3)**
 - a. Introduced on January 6, 2015.
 - b. Amends the Internal Revenue Code to repeal the prohibition on 501(c)(3) organizations from participating or intervening in political campaigns for office.
 - c. *Referred to the Committee on Ways & Means.*

UPDATES ON PERSONAL USE OF CAMPAIGN FUNDS

Personal Use of Campaign Funds

FEC v. Craig

- ▣ Campaign funds spent for personal legal expenses
- ▣ \$242,535 required to be paid to the US Treasury



Recent Developments

I. Personal Use of Campaign Funds

A. Litigation Update

1. ***FEC v. Craig*, __ F. Supp. 3d __, 2014 WL 4823874 (D.D.C. Sept. 30, 2014), appeal docketed, No. 14-5297 (D.C. Cir. Nov. 28, 2014)**
 - a. This case is an FEC enforcement action alleging that former Senator Larry Craig and his campaign committee violated FECA's ban on the personal use of campaign funds, 2 U.S.C. §439a(b). The Complaint alleges that defendants spent more than \$200,000 in campaign funds to pay for then-Senator Craig's personal legal expenses resulting from an arrest for disturbing the peace in an airport.
 - b. On September 30, 2014, the United States District Court for the District of Columbia found that the campaign funds at issue were converted to Senator Craig's personal use because the legal bills would have existed irrespective of his duties as an officeholder.
 - c. The court ordered Senator Craig to disgorge \$197,535 and pay a civil penalty of \$45,000 to the United States Treasury.
 - d. Defendants have appealed.

Personal Use of Campaign Funds

FEC v. O'Donnell

- ▣ Use of campaign funds to pay rent and utilities for town house that was candidate's residence and campaign headquarters



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Recent Developments

2. ***FEC v. O'Donnell*, No. 1:15-cv-00017-RGA (D. Del.)**
 - a. On January 5, 2015, the Commission filed suit against former Senate candidate Christine O'Donnell, her campaign committee, and her treasurer (in his official capacity as treasurer) for a violation of the prohibition on personal use, 52 U.S.C. 30114(b).
 - b. O'Donnell's campaign committee spent at least \$20,000 to pay for rent and utilities at a townhouse that served as both her residence and campaign headquarters.

Personal Use of Campaign Funds

S. 18

Sen. David Vitter (LA)



- ▣ Prohibits campaign committees and Leadership PACs from employing immediate family of any candidate or federal officeholder connected to the committee



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Recent Developments

B. Legislative Update

1. S. 18, Sen. David Vitter (LA)

- a. Introduced on January 6, 2015.
- b. Prohibits authorized committees and leadership PACs from employing the immediate family members of any candidate or federal office holder connected to the committee.
- c. *Referred to the Committee on Rules & Administration.*

Personal Use of Campaign Funds

H.R. 150

Rep. Walter Jones (NC-3)

- ▣ Prohibits all political committees from converting contributions to personal use



H.R. 714

Rep. Michael E. Capuano (MA-7)

- ▣ Prohibits conversion of Leadership PAC funds to personal use



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Recent Developments

2. **H.R. 150, *No Political Funds for Personal Use*, Rep. Walter B. Jones, Jr. (NC-3)**
 - a. Introduced on January 6, 2015.
 - b. Prohibits the conversion to personal use of contributions accepted by any political committee.
 - c. *Referred to the Committee on House Administration.*
3. **H.R. 714, Rep. Michael E. Capuano (MA-7)**
 - a. Introduced on February 4, 2015.
 - b. Prohibits the conversion of leadership PAC funds to personal use.
 - c. *Referred to the Committee on House Administration.*

UPDATES ON COORDINATION AND SUPER PACS

Coordination and Super PACs

H.R. 425, Stop Super PAC Candidate Coordination Act

Rep. David Price (NC-4)



- ▣ Revises definition of coordinated expenditures
- ▣ Prohibits candidates from fundraising on behalf of Super PACs, denying safe harbor for use of “firewalls”
- ▣ Repeals FEC regulations on coordination

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Recent Developments

I. Coordination and SuperPACs

A. Legislative Update

1. **H.R. 425, *Stop Super PAC-Candidate Coordination Act*,
Rep. David E. Price (NC-4)**
 - a. Introduced on January 21, 2015.
 - b. Defines coordinated expenditures as expenditures “*not* made entirely independently of the candidate, committee, or agents.”
 - c. Prohibits candidates from fundraising on behalf of super PACs, deny a safe harbor for use of “firewalls” and repeal FEC regulations on coordination.
 - d. *Referred to the Committee on House Administration.*

UPDATES ON PUBLIC FUNDING

Public Funding

H.R. 20, Government by the People Act

Rep. John Sarbanes (MD-3)



- ▣ Reforms financing of congressional elections; including 50% tax credit for small dollar donations and 6:1 matching with public funds
- ▣ Requires FEC as point of entry for all filings making them subject to electronic filing requirements
- ▣ Permits OGC to represent FEC before Supreme Court

I. Public Funding

A. Legislative Update

1. **H.R. 20, *Government By the People Act of 2015*, Rep. John P. Sarbanes (MD-3)**
 - a. Introduced on January 21, 2015.
 - b. Reforms the financing of Congressional elections by:
 - (1) Providing 50% tax credits for small dollar contributions;
 - (2) Establishing a pilot \$50 voucher program; and
 - (3) Creating a public funding program of 6:1 matching funds.
 - c. Establishes a Government by the People Oversight Commission at the federal level with state level commissions as well.
 - d. Requires all campaign finance reports to be filed with the FEC, making them subject to electronic filing requirements.
 - e. Permits the FEC's OGC to represent the FEC before the Supreme Court, in place of the Solicitor General.
 - f. *Referred to Committees on House Administration, Energy & Commerce and Ways & Means*

Public Funding

H.R. 424, Empowering Citizens Act

Rep. David Price (NC-4)

- ▣ Reforms Presidential public funding and establishes it for congressional elections; increase tax checkoff to \$20
- ▣ Revises definition of coordination
- ▣ Prohibits candidates from fundraising on behalf of Super PACs, denying safe harbor for use of “firewalls”
- ▣ Prohibits joint fundraising for candidates; expands bundling reporting requirements



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Recent Developments

2. **H.R. 424, *Empowering Citizens Act*, Rep. David E. Price (NC-4)**
 - a. Introduced on January 21, 2015.
 - b. Reforms presidential public funding programs and to establish a public funding program for Congressional elections of 6:1 matching funds. The check off amounts on tax returns would increase from \$3 to \$20, and taxpayers would be solicited for additional donations to the program.
 - c. Clarifies the treatment of coordinated expenditures as contributions to candidates. The bill would “describe” coordination as any payments not made “entirely independently” of the candidate and define “coordinated spenders” to include a candidate’s former advisers and family members.
 - d. Prohibits candidates from fundraising on behalf of super PACs, deny a safe harbor for use of “firewalls” and repeal FEC regulations on coordination.
 - e. Candidates would be prohibited from joint fundraising, and bundled contribution reporting requirements would be expanded.
 - f. *Referred to the Committees on House Administration and Ways & Means.*

Public Funding

H.R. 412

Rep. Tom Cole (OK-4)



- ▣ Terminates Presidential public funding programs
- ▣ Directs US Treasury to transfer \$88M from Presidential Election Campaign Fund (PECF) to the 10-year Pediatric Research Initiative Fund, with the balance of the PECF to the general treasury



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Recent Developments

3. **H.R. 412, Rep. Tom Cole (OK-4)**
 - a. Introduced on January 20, 2015.
 - b. Terminates the presidential public financing programs.
 - c. Directs the U.S. Treasury to transfer \$88 million from the Presidential Election Campaign Fund (PECF) to the 10-Year Pediatric Research Initiative Fund, with the balance of the PECF to the general treasury.
 - d. *Referred to the Committees on House Administration and Ways & Means.*

UPDATES ON THE ELECTION ASSISTANCE COMMISSION

Election Assistance Commission

H.R. 195, Election Assistance Termination Act

Rep. Gregg Harper (MS-3)



- ☐ Terminates Election Assistance Commission (EAC)
- ☐ Transfers duties under the Voter Registration Act of 1993 ("Motor Voter") to the FEC
- ☐ In 112th Congress, H.R. 3463 passed in House by vote of 235 to 190 on December 1, 2011



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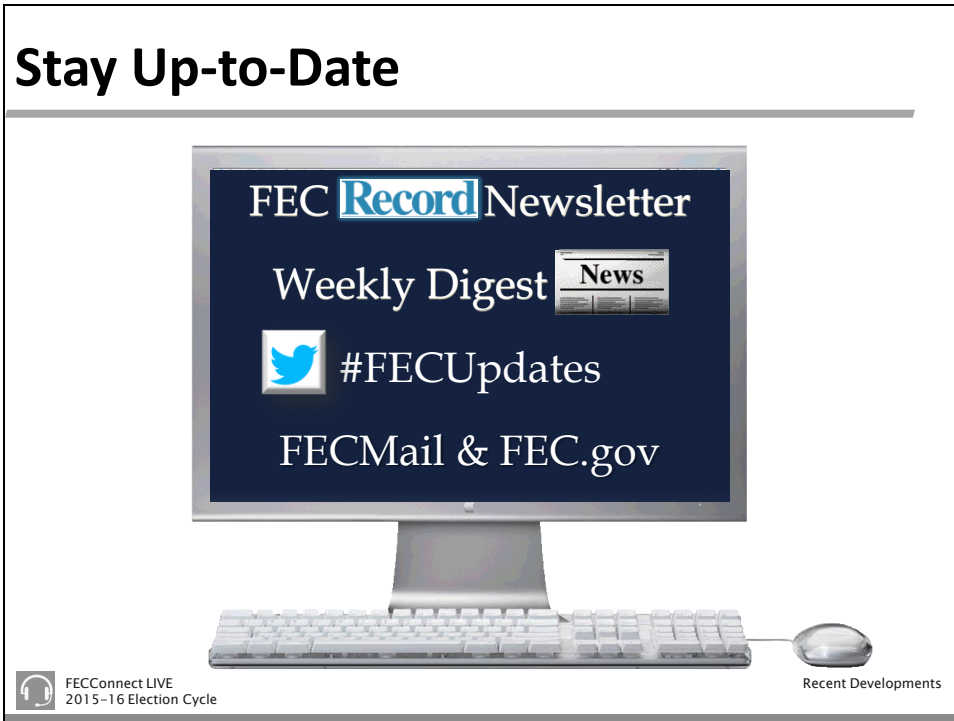
Recent Developments

I. Election Assistance Commission

A. Legislative Update

1. **H.R. 195, *Election Assistance Termination Act*, Rep. Gregg Harper (MS-3)**
 - a. Introduced on January 7, 2015.
 - b. Terminates the Election Assistance Commission
 - c. Transfers to the FEC only its duties under the Voter Registration Act of 1993, known as the "Motor Voter Act."
 - d. *Referred to the Committee on House Administration.*
 - e. *History:*
 - 113th Congress (2013-14): H.R. 1994, *Reported by the Committee on House Administration; H.R. Rep. 113-293 (Dec. 12, 2013).*
 - 112th Congress (2011-12): H.R. 3463, which would have terminated the presidential public funding programs and the Election Assistance Commission, passed the House of Representatives by 235-190 on December 1, 2011.

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